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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/614,118	07/11/2000	David W. Cannell	5725.0393	1975

7590 02/21/2002

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EXAMINER
SEIDLECK, BRIAN K

ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 02/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/614,118	Applicant(s) CANNELL ET AL.	
	Examiner Brian K. Seidleck	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 November 2001* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-56* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-56* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, and 19-29 are rejected under 35 U.S.C. § 102(b) as being anticipated by Wisotzki et al (U.S. Pat. No. 4,900,545).

Wisotzki discloses a hair care composition useful in protecting hair (repairing split ends) comprising a sugars including glucose, mannose, galactose, ribose, arabinose, xylose, fructose, cellobiose, etc., and mixtures thereof. See abstract and Cols. 2-3. The treatment preparations are in the form of aqueous solutions or emulsions, which may be formulated into shampoos or permanent wave setting lotions. See Cols. 3 & 5-6.

Response to Arguments

3. Applicant's arguments filed 11/29/2001 have been fully considered but they are not persuasive.

Applicant argues that Wisotzki fails to disclose that its compositions protect hair. Applicant's attention is directed to Col. 1, lines 5-10 of Wisotzki, wherein the reference teaches that its compositions are used for the caring and revitalization of mistreated hair, including the regeneration of hair damaged by split ends. Further Wisotzki's compositions halt further

progress of splitting and restores the damaged hair to a healthy appearance. See Col. 1, lines 25-30. Last, Wisotzki teaches types of extrinsic damage that causes split ends at Col. 1, lines 14-25. Thus, it remains the examiner's position that the prior art reads on the present claims.

As for present claims 28 and 29, it is noted that applicant's definition for repairing damaged keratinous fibers is in the specification and not the claims. However, although the claims are read in view of the specification, limitations are not read into the body of the claim. Thus, it remains the examiner's position that the prior art reads on the present claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-56 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Wisotzki et al (U.S. Pat. No. 4,900,545); Koga et al (U.S. Pat. No. 5,660,838); Syed et al (U.S. Pat. No. 5,641,477); and Felardos et al (U.S. Pat. No. 5,866,111).

Wisotzki discloses a hair care composition useful in protecting hair (repairing split ends) comprising a sugars including glucose, mannose, galactose, ribose, arabinose, xylose, fructose, cellobiose, etc., and mixtures thereof. See abstract and Cols.2-3. The treatment preparations are in the form of aqueous solutions or emulsions, which may be formulated into shampoos or

permanent wave setting lotions. See Cols. 3 and 5-6. Similarly, Syed teaches the application of a sugar (sucrose, glucose, fructose, sorbitol, and glycerol) during the relaxing of hair for increasing the hair's tensile strength and decreasing the amount of damage done by this heating/chemical treatment. Other sugars useful in protecting the hair are known in the art, including xylobiose. See Koga at abstract and Col. 2. As for the present invention's use of the compositions on eyelashes, the examiner relies on the additional teachings of Felardos. The reference teaches the use of sugars and their derivatives in mascara formulations. See abstract. These sugars include arabinose, ribose, xylose, lyxose, ribulose, xyulose, etc. See Col. 2.

The prior art teaches that the claimed sugars are useful in protecting keratin fibers from external damage. The art teaches that such sugars may be incorporated into formulations and subsequently treated (permanent wave lotions or relaxing compositions). The sugars are useful in protecting hairs against split ends, increasing tensile strength and reducing damage during harsh treatments. It would have been obvious to use said sugars in hair care compositions to protect hair, since these sugars are known to provide beneficial properties to hair.

Response to Arguments

6. Applicant's arguments filed 11/29/2001 have been fully considered but they are not persuasive.

Applicant argues that Wisotzki fails to disclose that its compositions protect hair. Applicant's attention is directed to Col. 1, lines 5-10 of Wisotzki, wherein the reference teaches that its compositions are used for the caring and revitalization of mistreated hair, including the

regeneration of hair damaged by split ends. Further Wisotzki's compositions halt further progress of splitting and restores the damaged hair to a healthy appearance. See Col. 1, lines 25-30. Last, Wisotzki teaches types of extrinsic damage that causes split ends at Col. 1, lines 14-25. Thus, it remains the examiner's position that the prior art reads on the present claims.

As for present claims 28 and 29, it is noted that applicant's definition for repairing damaged keratinous fibers is in the specification and not the claims. However, although the claims are read in view of the specification, limitations are not read into the body of the claim. Thus, it remains the examiner's position that the prior art reads on the present claims.

As for the heating step of claims 30-65 (composition applied prior to or during heating), the examiner again notes that Wisotzki teaches that its compositions may be in the forms of permanent wave setting lotions. It is notes that heat is commonly utilized in waving formulations.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the present claims are drawn to the protection of and repairing of hair from *any* extrinsic force. All of the references cited, teach the benefits associated with sugars used in hair care compositions (protecting hairs against split ends, increasing tensile strength and reducing damage during harsh treatments). Applicant's claims are drawn generally to the

protection and repairing of hair, and therefore, it remains the examiner's position that the combination of references is proper in view of the broad claim language. Thus, it would have been obvious to use sugars in hair care compositions to protect and treat hair, since the claimed sugars are known to provide beneficial properties to hair for a variety of conditions.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Seidleck whose telephone number is (703) 305-4448. The examiner can normally be reached on M-F (6:30am - 5:00pm) Every Wednesday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Brian K. Seidleck
Examiner
Art Unit 1615

BKS
February 14, 2002

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
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